

Final Order Denying Refund: 04-20221057
Sales Tax
for the Year 2021

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Out-of-state Individual was not entitled to a refund of Indiana sales tax on his recreational vehicle purchase because Individual purchased and took possession of the RV at Indiana Dealership's Indiana business location and because the dealer correctly charged Individual Indiana's seven-percent rate. The transaction was an Indiana sale subject to Indiana sales tax.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-8.1-9-1; IC § 6-2.5-2-1; IC § 6-2.5-2-3; IC § 6-2.5-13-1; IC § 6-2.5-5-39; *Dep't of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin 72 (July 2020); Sales Tax Information Bulletin 84 (July 2020).

Taxpayer protests the denial of a refund requesting the return of a portion of Indiana sales tax paid to an Indiana recreational vehicle dealer.

STATEMENT OF FACTS

Taxpayer is a Michigan resident who purchased a recreational vehicle ("RV") from an Indiana dealership. Taxpayer paid Indiana's seven percent sales tax of approximately \$4,700 at the time of purchase. Taxpayer returned home to Michigan and took the vehicle with him. Taxpayer registered and insured the RV in Michigan.

Taxpayer submitted a refund claim requesting the return of approximately \$700 on the ground that the Indiana RV dealer should have charged him sales tax at Michigan's six-percent sales tax rate.

The Indiana Department of Revenue ("Department") denied the refund. Taxpayer disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer explained the basis for his protest. This Final Order Denying Refund results.

I. Sales Tax - Refund.

DISCUSSION

The issue is whether the Indiana RV dealer should have charged Taxpayer sales tax at Indiana's seven-percent rate or should have collected Indiana's sales tax using Michigan's six-percent sales tax rate. If the RV dealer should have collected Indiana sales tax at the six-percent rate, Taxpayer is entitled to a refund; if the RV dealer was correct in charging seven-percent sales tax, Taxpayer is not entitled to the refund.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute provides, in part:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department.

Indiana imposes an excise tax called "the state gross retail tax" or "sales tax" on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail sale is sourced to Indiana and subject to Indiana sales tax when the transaction is a "retail sale" and the product is received by the purchaser at the business' location in Indiana. IC § 6-2.5-13-1(d)(1). A retail merchant that has a physical presence in Indiana is required to collect the tax as an agent for the State. IC § 6-2.5-2-1(b).

Tax exemptions are strictly construed against the taxpayer. *Dep't of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). The taxpayer has the burden of establishing qualification under the terms of the exemption. *Id.* IC § 6-2.5-5-39(c) explains the taxability and exemption provisions involving a cargo trailer or recreational vehicle.

Taxpayer necessarily relies on a provision in Indiana law addressing the Indiana purchase of vehicles by out-of-state residents. That provision provides a deferential treatment for certain qualified Indiana motor vehicle sales. Specifically, an out-of-state purchaser who buys a vehicle in Indiana but intends to title and register and use the vehicle in states other than Indiana (within 30 days after the sale) may pay the tax rate of the state for which the vehicle is ultimately titled, registered, and used. IC § 6-2.5-2-3 provides:

(a) As used in this section, "**motor vehicle**" means a vehicle that would be subject to the vehicle excise tax imposed under [IC 6-6-5](#) if the vehicle were to be used in Indiana.

(b) Notwithstanding section 2 of this chapter, the state gross retail tax rate on a motor vehicle that a purchaser intends to:

(1) transport to a destination outside Indiana within thirty (30) days after delivery; and

(2) title or register for use in another state or country;

is the rate of that state or country (excluding any locally imposed tax rates) as certified by the seller and purchaser in an affidavit satisfying the requirements of subsection (c). (**Emphasis added**).

IC § 6-2.5-2-3 requires Indiana vendors to charge out-of-state purchasers Indiana sales tax when it sells vehicles to those out-of-state residents. However, the vendor is authorized to impose the Indiana tax using the destination state's tax rate on purchases of "motor vehicles."

The applicable sales tax rate for Michigan is six percent. Therefore, Taxpayer believes that the Indiana dealership should have charged him Indiana sales tax at the lower Michigan rate and that he is now entitled to a refund of the one-percent differential.

The Department's Sales Tax Information Bulletin 84 (July 2020) 20200826 Ind. Reg. 045200440NRA, explains that the deferential treatment called for in IC § 6-2.5-2-3 "is available for nonresident purchasers of recreational vehicles that will register their vehicles in a nonreciprocal state" However, Taxpayer did not purchase a qualifying "motor vehicle" as defined in IC § 6-2.5-2-3(a). The Bulletin explains what otherwise appears to be an anomaly.

The term "motor vehicle" means a vehicle that would be subject to the annual license excise tax imposed under [IC 6-6-5](#) if the vehicle were to be used in Indiana. This includes cars, motorcycles, and trucks weighing 11,000 pounds or less. This does **not** include motor homes; trucks weighing greater than 11,000 pounds; or trailers. (**Emphasis in original**).

Taxpayer did not purchase a car, motorcycle, or a truck weighing 11,000 pounds or less. Michigan Taxpayer purchased a 2016-2017 "Thor Motor Coach Synergy" which plainly falls within Indiana's definition of a "motor home."

Taxpayer took possession of the RV in Indiana which makes it subject to Indiana's sales tax under IC § 6-2.5-13-1(d)(1). Although Taxpayer returned to his Michigan home taking the RV with him, the purchase does not fall within the 30-day drive-away exemption because Michigan is a non-reciprocal state. Sales Tax Information Bulletin 72 (February 2021), 20200729 Ind. Reg. 045200399NRA, explains:

Sales to nonresidents of Indiana of recreational vehicles and cargo trailers by Indiana dealers destined for out-of-state registration are exempt from the Indiana sales tax if the state where the recreational vehicle or cargo trailer will be registered provides a similar exemption for an Indiana resident making a purchase in that state[.]

. . . .

There are eight nonreciprocal states (as well as all foreign countries, including Canada and Mexico) that do not provide an exemption for vehicles to be registered in Indiana. Because of this, purchases of RVs or trailers 1) made from Indiana dealers and 2) which are to be registered in one of the following states will be required to pay **Indiana sales tax** at the time of purchase: Arizona California Florida Hawaii Massachusetts **Michigan** North Carolina South Carolina. (**Emphasis added**).

More simply put, Taxpayer purchased and took delivery of an RV in Indiana making it subject to Indiana sales tax; Taxpayer may not claim the 30-day drive-away exemption because Taxpayer transported and titled the vehicle in Michigan which is a non-reciprocal state; Taxpayer is not entitled to deference allowed to out-of-state purchases of cars, trucks (applying the Michigan rate) because Michigan does not allow that same deference to Indiana purchasers of RVs in Michigan.

FINDING

Taxpayer's protest is respectfully denied.

June 15, 2022

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